IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.Nos.12760 and 12761 of 2004

Baywest Power and Energy Private Ltd.
433, 9th Cross, 8th Main Road
II Stage, RMV Extension II, MIG
Bangalore-560 094
represented by Mr.N.Ramakrishnan
General Manager (Finance) .. Petitioner in both writ petitions

versus

Assistant Commissioner of Income Tax
Circle I (2)
121, Mahatma Gandhi Road
Nungambakkam
Chennai-34. .. Respondent in both writ petitions

PRAYER: W.P.Nos.12760 and 12761 of 2004 are filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records in PA/GIR.No.BX4-226/AAACB3113G dated 30.3.2004 relating to the assessment year 1999-2000 and 2000-2001 respectively on the file of the respondent and to quash the same.

For petitioner : Mr.V.Ramachandran
Senior Advocate for
Dr.Anita Sumanth

For respondent : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax

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ORDER

(Order of the Court was made by CHITRA VENKATARAMAN,J.)

These writ petitions are for the issue of a writ of certiorari to quash the orders of assessment for the years 1999-2000 and 2000-2001 dated 30.3.2004, passed by the respondent, namely, the Assistant Commissioner of Income Tax Circle-I(2), Chennai. The assessee/petitioner herein is a company.

2. In respect of the Assessment Years 1999-2000 and 2000-2001, it is stated that the assessee filed the returns under Section 139 of the Income Tax Act, 1961. The allegation of the petitioner herein is that, after issuing the intimation under Section 143(1) but without following the procedure prescribed under Section 143(2), the respondent proceeded to issue notice under Section 148. The said reopening was objected to on the ground of jurisdiction, apart from merits on the reopening.

3. It is stated that the petitioner had informed the respondent that they are registered in the state of Karnataka and having their registered office in Bangalore. It is further stated that the respondent did not act on the original returns filed. It is further alleged that being loss returns filed beyond due dates, they were not even valid in law.

4. The Chief Commissioner of Income Tax, Madras, by order No.1/96-97 dated 3.6.1996, determined the jurisdiction as being confined to companies registered in Madras. It is alleged that the respondent ignored the objection on the question of jurisdiction and finalised the assessment under Section 147. The petitioner states that the assessment made is totally without jurisdiction and violative of the provisions of the Act and the principles of natural justice.

5. It is further stated that assessment of companies having their registered office in the Union Territory of Pondicherry, but assessed by the respondent herein ignoring the plea of want of jurisdiction, are challenged before this Court in writ proceedings and the same are pending. In the above circumstances, the petitioner has preferred this writ petition.

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6. Learned senior counsel appearing for the petitioner herein contends that the Central Board of Direct Taxes determined the territorial jurisdiction for assessment in terms of Sections 120 to 124. The company, incorporated at Karnataka in Bangalore, could not be proceeded against by the respondent herein. The petitioner also contended that the Officer had made the assessment based on certain statements alleged to have been made by two officials, who, according to the petitioner, were not employees of the petitioner. Consequently, the proceedings passed without

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furnishing the copy of those statements, were totally in violation of the provisions of the Act. Considering the fact that the petitioner is a company registered in Bangalore, the respondent totally lacked in jurisdiction. Learned senior counsel pleaded that on the question of want of jurisdiction itself, the orders are liable to be quashed.

7. A perusal of the writ affidavit clearly shows that the petitioner has admitted about the existence of an effective alternative remedy available under the provisions of the Act against the order of re-assessment. It is not denied by the learned senior counsel that the question of jurisdiction, apart from merits, can be raised for consideration before the appropriate appellate forum.

8. Mr.V.Ramachandran, learned senior counsel appearing for the petitioner, however, submitted that considering the total lack of jurisdiction to assess this petitioner under Section 148, the writ petition filed merited consideration by this Court. He also referred to the orders passed by this Court in other writ petitions and prayed for interference.

9. The Revenue has filed its counter affidavit.

10. Learned standing counsel appearing for the respondent, however, submitted that considering the admitted position that an efficacious remedy is available to the assessee by way of an appeal to the Commissioner of Income Tax (Appeals), the writ petitions are not maintainable. She further pointed out that the notice under Section 148 was issued to the petitioner on 1.4.2002. the petitioner submitted a letter on 25.2.2002 stating that they wanted to inspect certain documents and promised to file a detailed reply. On 4.9.2002 and 21.8.2002, the petitioner filed letters authorising Shri.K.V.Rangnathan & Co., Chartered Accountants, to represent their case. They expressed their cooperation to complete the assessment proceedings. Thereafter, a detailed letter, enclosing a copy of the letter dated 15.5.2002, was sent to the petitioner on 9.2.2004. However, there was no response. The assessment was completed under Section 144. The petitioner is one among the Group concerns against whom proceedings were initiated under Section 148. All the Group companies claimed benefits under Section 80-I. They all have filed their returns at Chennai, giving local address. It is also stated that the petitioner did not file any return in response to the notice under Section 148. The assessment was completed on the basis of material available on record. In spite of adequate opportunity granted, the petitioner had not availed of the same to defend its cause. Learned standing counsel submitted that the contentions that are taken here can equally be taken before the statutory authorities and there are no extraordinary circumstances in this case for the Court to exercise jurisdiction under Article 226 of the Constitution of India.

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11. We agree with the submissions made by the learned standing counsel appearing for the respondent herein. A perusal of the orders impugned herein show that the issues raised in the writ petitions were taken before the respondent too, who had passed the orders after considering the same. Since the issue involved in the writ petitions required investigation into the facts, including the issue on jurisdiction, we do not find any extraordinary circumstance to go into the merits. It is a matter for the statutory authorities to consider if and when an appeal is preferred.

12. Admittedly, the assessee has an alternative remedy, and it is not denied that it is an efficacious remedy. In a recent decision reported in 279 ITR 342 (DR.K.NEDUNCHEZHIAN Vs. DEPUTY CIT), a Division Bench of this Court, affirmed the decision reported in 274 ITR 37 (DR.K.NEDUNCHEZHIAN Vs. DEPUTY CIT) and following the decision of the Apex Court, held that when there is an alternative remedy, ordinarily, writ jurisdiction under Article 226 of the Constitution of India should not be invoked and that the principle applies with greater force to this proceedings.

13. Considering the issues involved and applying the decision cited above, we dismiss the writ petitions. It is open to the assessee/petitioner to prefer appeal, if they deem fit, within a period of thirty days from the date of receipt of a copy of this order. No costs. Consequently, the connected M.P.Nos.14866 and 14867 of 2004 and W.V.M.P.No.572 of 2005 are closed.

ksv

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:
1.The Assistant Commissioner of Income Tax
Circle I (2)
121, Mahatma Gandhi Road
Nungambakkam
Chennai-34.

+ One cc to Dr. Anita Sumanth Advocate sR 15289
+ One cc to Mrs. Pusya Sitaraman Advocate sR 15299
MM (co)
sg 2/4/07

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Dated: 12.03.2007

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